



**Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals**

John Lee, Chairman
Susanne Murphy, Vice Chairman
Robert Fitzgerald, Clerk
Mary Jane Coffey, Member
Rick Merrikin, Member
Drew Delaney, Associate Member

November 6, 2019

DECISION - BOARD OF APPEALS CASE NO. 18-19

APPLICANT:

Providence HWY Realty Ventures LLC

LOCATION OF PROPERTY INVOLVED:

623 Boston Providence Highway, Walpole and shown on the Assessors Map as Lot No. 36-29, Highway Business Zone.

APPLICATION FOR:

A Special Permit under Section 5-B.1.4.e of the Zoning By-Laws to allow the site to be used for the sale of automobiles; and

A Special Permit under Section 9:3.A of the Zoning By-Laws to allow the continued use of the existing non-conformities on the site.

On September 4, 2019 a Public Hearing was held in the Richard Stillman Community Room in the Main Meeting Room of Town Hall, 135 School Street, for the purpose of receiving information and voting upon a decision as to the granting of **Special Permits** to the Providence HWY Realty Ventures LLC. The public hearing was continued to October 16, 2019 and November 6, 2019 at which time the Board closed the public hearing.

The following members were present and voting:

John Lee, Chairman
Susanne Murphy, Vice Chairman
Robert Fitzgerald, Clerk
Mary Jane Coffey, Member
Drew Delaney, Associated Member

The following members recused themselves:

Rick Merrikin, Member

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A motion was made by Coffey, seconded by Murphy, to grant a **Special Permit** pursuant to Section 5-B.1.4.e of the Zoning By-Laws to allow site to be used for the sale of automobiles.

The vote was **5-0-0 in favor** (Lee, Murphy, Fitzgerald, Coffey and Delaney voting), therefore the **Special Permit** application is hereby **GRANTED subject to the conditions below**:

A motion was made by Coffey, seconded by Murphy, to grant a **Special Permit** pursuant to Section 9.3.A of the Zoning By-Laws to allow the continued use of the area from the 30-foot front yard setback and the 50-foot front yard setback for vehicle parking.

The vote was **5-0-0 in favor** (Lee, Murphy, Fitzgerald, Coffey and Delaney voting), therefore the **Special Permit** application is hereby **GRANTED subject to the conditions**:

CONDITIONS:

- 1) The site shall be in substantial conformance with the plan prepared by Legacy Engineering LLC entitled “Bidcars Boston, 623 Boston-Providence Highway Site Plan of Land in Walpole, MA” with an original date of July 30, 2019 and a latest revision date of October 3, 2019.
- 2) There shall be no parking of vehicles within 30 feet of the front lot line.
- 3) Exterior lighting shall be reduced by at least 50% after 8:30 pm.

* * * * *

REASONS FOR DECISION UNDER 5-B.1.4.e:

The Board finds that the applicant was able to meet the requirements of Section 5-B.1.4.e of the Zoning By-law for the granting of a special permit in that:

- *...all vehicle storage areas must be paved and be equipped with gas trap.*

The approved site plan includes provisions for a stormwater management system that includes an oil/water separator (i.e. gas trap).

- *All vehicles will be required to park on paved surfaces.*

As the approved site plan indicates, all vehicle parking will be on paved surfaces.

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REASONS FOR DECISION UNDER 9.3.A:

The Board finds that the site has been used for car sales since a 1983 site plan/special permit, which predated a December 1983 20-foot widening along this side of Route 1. As such, the outer 20 feet of the current 50-foot front yard setback was an area where parking was allowed under the 1983 approval. Thus, the area extending from the 30-foot front yard setback (which

was the 50-foot front yard setback in 1983) to the current 50-foot front yard setback is pre-existing nonconforming with respect to vehicle parking. The Applicant proposes minor reconfiguration of parking areas within this 20-foot wide strip.

The Board finds that the applicant was able to meet the requirements of Section 9.3.A of the Zoning By-law in that:

➤ *A nonconforming use may be ... altered, expanded or extended ... in accordance with the provisions of section 2.2;*

○ Refer to the findings below for section 2.2 of the Zoning Bylaw.

➤ *Provided further that the Board finds that such alteration, expansion or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming use.*

The Applicant proposes minor changes in the layout of vehicle parking within the 20' portion of front yard setback as shown on the plan. These changes are insubstantial and will not materially affect the nonconforming use, which is allowed to continue. For these and the other reasons discussed herein, the Board finds that the proposed reconfiguration of vehicle parking within the area bounded by the 30-foot front yard setback and the 50-foot front yard setback is not substantially more detrimental to the neighborhood than the existing nonconforming use.

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FURTHER FINDINGS

It is the finding of the Board that the applicant was able to meet the requirements of Section 2.2.B of the Zoning Bylaws, which requires that:

(1) *Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:*

(a) *Does and shall comply with such criteria or standards as shall be set forth in in the section of this Bylaw which refers to the granting of the requested special permit;*

As discussed above, the proposed work complies with the special permit provisions of Section 5-B.1.4.e and 9.3.A of the Zoning By-law.

(b) *Shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;*

The Board finds that the site has historically been used for used car sales and while the use is expanding, the site has direct access to Route 1 via existing driveways. There is no access from the site to adjacent residential neighborhoods.

The expansion of the existing uses is not expected to significantly affect traffic or

pedestrian patterns in the immediate neighborhood. The Board therefore finds that this requirement is met.

(c) Shall not have a number of residents, employees, customers, or visitors so as to adversely affect the immediate neighborhood;

The Board finds that the site has historically been used for used car sales and that the proposed expansion of the use will not generate an unreasonable number of residents or visitors so as to adversely affect the immediate neighborhood. Access to and from the site is strictly from Route 1, a local highway with adequate capacity for the use. The Board therefore finds that this requirement is met.

(d) Shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;

The Board finds that a 40-foot buffer, as required in Section 5-G, is to be revegetated with new evergreen trees at the express request of the residential abutter. As indicated on the approved site plan, all other dimensional requirements, including lot coverage, are met. The Board therefore finds that this requirement is met.

(e) Shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;

The Board finds that used car uses are not generally known to be dangerous due to fire, explosion, emission of wastes, or other causes. The proposed use is sited on an appropriate commercial property in a Highway Business zoning district. Buffering to the residential neighbors behind the site is provided in accordance with the Bylaw. Lighting is directly downward and will be reduced in intensity at night. As such, the Board finds that this criterion is met.

(f) Shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;

The Board finds that used car uses are not generally known to be associated with significant amounts of noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard which would adversely affect the immediate neighborhood. The site is located within a Highway Business zone where appropriate commercial activities are normal. As such, the Board finds that this criterion is met.

(g) Shall not adversely effect the character of the immediate neighborhood; and

The Board finds that the property in question lies within an existing commercial neighborhood in a Highway Business zoning district where commercial activities such as the proposed use are typical. Appropriate measures are provided with respect to buffering to adjacent residential properties, control of lighting and control of stormwater management. The Board therefore finds that this criterion is met.

(h) Shall not be incompatible with the purpose of the zoning Bylaw or the purpose of the zoning district in which the premises is located.

The Board finds that the proposed expansion of an existing commercial use (used car sales) on an existing commercial site in a Highway Business zoning district is appropriate and consistent with the purpose of the district. As such, the Board finds that this criterion is met.

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Consistency: This decision is consistent with purpose and intent of the Zoning By-laws.

The grant of relief under this decision is limited to the relief expressly granted hereunder; and any other relief sought is hereby denied.

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Said Special Permits(s) is(are) granted pursuant to Massachusetts General Laws c. 40A, s.9 which provides in pertinent part as follows:

"...special permits granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause."

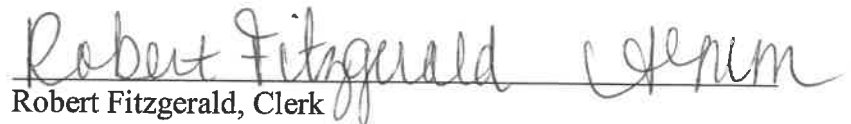
Massachusetts General Laws c. 40A, s. 11. provides in pertinent part as follows:

"A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided

under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant.”

MASSACHUSETTS GENERAL LAWS c. 40A, s. 15 PROVIDES THAT APPEALS FROM A DECISION OF A BOARD OF APPEALS SHALL BE MADE PURSUANT TO SECTION 17 OF c 40A AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS


Robert Fitzgerald, Clerk

cc: Town Clerk
Applicant
Building Inspector

| This decision was made on November 6, 2019 and filed with the Town Clerk on November 18, 2019.